

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Nathan Clay and Mark Tejada

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: May 18, 2017

SUBJECT: Proposed initiative measure 2017-2018 #36, concerning State Income Tax Increase for Scholarship Program

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #34, was the subject of a memorandum dated May 2, 2017. Proposed initiative 2017-2018 #34 was discussed at a public meeting on May 4, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior

comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To create a scholarship program for qualified Colorado citizens that pays for tuition and certain costs associated with attending a Colorado public institution of higher education to earn an associate's degree or a bachelor's degree; and
2. To pay for the scholarship program by raising the Colorado income tax rate by 9/10ths of a percent.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will the proponents submit the initiative to the Title Board? If so, when do the proponents intend to do so?
 - b. Are the proponents submitting a fiscal impact estimate today? If not, do the proponents plan to submit an estimate in the future, and if so, when do the proponents intend to do so?
 - c. To ensure that there is time for consideration, the proponents are strongly encouraged to submit their estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

3. Regarding section 23-77-107 (3) of the proposed initiative, which states that "the scholarship and the related costs incurred by state and local governments would be paid for with an income tax increase of nine-tenths of a percent":
 - a. When would the income tax rate increase take effect? The date that the proposed initiative takes effect (i.e., July 1, 2019)? Would it be more administratively feasible to align the increase with the commencement of a tax year (i.e., January 1st annually)?
 - b. With respect to the funding of related costs:
 - i. What does the term "related costs" entail? What types of costs do the proponents anticipate the state will incur if the proposed initiative is enacted? What expenses will local governments incur? Does "related costs" include the Colorado Department of Higher Education's administrative costs? Any administrative costs of the Colorado Department of Revenue or other agencies?
 - ii. Who decides which expenses are appropriately reimbursed, and in what amounts, from the income tax rate increase? What is the process for obtaining reimbursement?
 - iii. To which "state and local governments" does this provision apply? Would the proponents consider defining or elucidating that term?
 - c. Regarding the money generated by the tax rate increase:
 - i. Would this be a separate income tax, or is it the proponents' intent to increase the existing rate of the state income tax set forth in article 22 of title 39 of the Colorado Revised Statutes, for example, from 4.63 percent to 5.53 percent? Is it intended to be imposed against both individuals pursuant to part 1 of that article and corporations pursuant to part 3? Would it use the same calculations to determine taxable income? Would it be subject to the same exemptions, collections procedures, and other provisions governing existing state income tax? Would the proponents amend the appropriate sections in title 39 to address these issues?
 - ii. How did the proponents arrive at a rate of increase of 9/10ths of a percent over the current rate?

- iii. For the 2015-16 state fiscal year, the existing state income tax on individuals and corporations generated 7.2 billion dollars in revenue. A 9/10ths of a percent increase in the existing state income tax rate is estimated to increase revenue for the 2015-16 state fiscal year by 1.4 billion dollars. If the income tax rate hike results in insufficient money to fund the scholarship program created by the initiative, what is the result? Is the state required to fund the scholarship program using other money so that every eligible applicant is awarded a scholarship? Stated another way, is it the proponents' intent that the income tax rate increase comprise the entirety of funds available for the scholarship program (in which case the number of students who may avail themselves of the scholarship is limited by the money generated by the increase), or is it the proponents' intent to merely defray the total cost of the scholarship program but not to deny the scholarship to any eligible student? If the former, and the students are limited based on the money generated by the tax rate increase, how are the scholarship recipients determined?
 - iv. If excess revenue is generated, what happens to the remaining money (e.g., does it revert to the general fund to be used for other purposes, or are they saved)?
 - d. Is the tax rate increase a permanent increase? Is the scholarship program intended to be permanent?
 - e. Typically, revenues from the state income tax are deposited into the state general fund. How would the revenues resulting from the income tax increase be tracked for the purpose of determining the money available for the scholarship program? Can/should the money be transferred to a cash fund under the Colorado Department of Higher Education's control for the purposes of administering the program?
 - f. Is it the proponents' intent that the Colorado General Assembly enact legislation to facilitate the implementation of the scholarship program? Does the Colorado Department of Higher Education currently have rule-making authority to create regulations for the administration for the program?
 - g. Would the revenues generated by the tax rate increase be counted as fiscal year spending for the purposes of the Taxpayer's Bill of Rights

(TABOR) found in section 20(7)(a) of article X of the Colorado Constitution? If not, would the proponents consider including appropriate language to exclude the revenues from TABOR fiscal year spending?

- h. Would scholarship awards that must be repaid because a student does not remain qualified for in-state tuition due to moving out of state constitute state revenue for TABOR purposes? If not, the proponents may want to include specific language stating that scholarship repayment in the form of loans does not constitute TABOR state revenue for purposes of TABOR.

4. Section 23-77-103 of the proposed initiative – Definitions:

- a. (2) - "Public college" –
 - i. The definition includes a "public institution of higher education in the state of Colorado supported in whole or in part by public fund moneys". The proponents may want to clarify that the institutions are funded by state or local money, as "public fund moneys" could include institutions that receive federal money.
 - ii. Under current statutory drafting guidelines, "moneys" should be singular – "money".
- b. (3) – "Qualified for in-state tuition" means an applicant who "meets the criteria established by article 7 of this title for in-state tuition".
 - i. Without further limitation, this definition could allow a very broad group of persons to qualify for free college in Colorado and could result in large immigration to the state to take advantage of free college. For example, pursuant to section 23-7-103, Colorado Revised Statutes, an emancipated minor, married student, or anyone 22 years of age or older who moves to Colorado and is domiciled in the state for one year could attend college for free. Is this the proponents' intent? If not, proponents may want to add additional criteria to the eligibility provisions in section 23-77-104 of the proposed initiative beyond just meeting the criteria "established by article 7 of title 23 for in-state tuition". For example, the proponents could require the scholarship recipient to graduate from or successfully complete a high school equivalency exam after attending a Colorado high school after some period of time. The proposed language could also be drafted to allow the Colorado Commission on Higher Education

to adopt uniform policies relating to the applicability of article 7 of title 23 for purposes of scholarship eligibility, which could allow the Colorado Commission on Higher Education to exclude some persons from the scholarship program.

- ii. Further, in article 7 of title 23, Colorado Revised Statutes, sections 23-7-103.5, 23-7-105, and 23-7-106, and sections 23-7-108 to 23-7-111 require or permit state institutions of higher education to classify certain persons as in-state students for tuition purposes. For example, pursuant to section 23-7-106, Colorado Revised Statutes, Canadian military personnel stationed in Colorado, and their dependents, qualify for in-state tuition while stationed in Colorado. Do the proponents intend for these Canadians and their dependents to be eligible for free college while stationed in Colorado? In another example, section 23-7-110, Colorado Revised Statutes, requires in-state tuition classification for students who attend a Colorado public or private high school for at least three years immediately preceding the date the student graduates from a Colorado high school or completes a high school equivalency exam. This could include students from other states who attend a private high school in Colorado, as well as students who attend Colorado high schools but who do not have lawful immigration status in the United States. Do the proponents intend to include these students in the scholarship program?

- c. (7) – "Final semester" – there appears to be words missing from the definition after the first "money".

5. Section 23-77-104 of the proposed initiative – Eligibility:

- a. Should this section include the requirement that a student be admitted to a public college?
- b. Per #4 above, if the proponents intend to limit eligibility, this section should include additional provisions.
- c. The proponents may wish to clarify that the Colorado Commission on Higher Education shall adopt policies relating to which provisions of article 7 of title 23, Colorado Revised Statutes, apply for purposes of scholarship eligibility.
- d. The applicant must "select a degree path". Some public institutions of higher education require a common undergraduate core of courses and a student does not select a major or degree path until he or she has

earned a certain number of credits, for example, after freshman year. Would it be appropriate for the Colorado Department of Higher Education, the Colorado Commission on Higher Education, or the public college that the student will attend to adopt a policy regarding selecting a degree path for purposes of meeting the scholarship eligibility requirements?

6. Section 23-77-105 of the proposed initiative – Scholarship coverage:
 - a. Who determines the "cost of tuition"? Is the Colorado Commission on Higher Education authorized to adopt policies relating to the cost of attendance at each institution, including tuition, fees, books, and room and board, for purposes of the scholarship award?
 - b. What is included in "equipment"? Does it include computers, software, and/or furniture? How will that amount be determined?
 - c. How is a student's family's income determined for purposes of qualifying for room and board? Is it based on the FAFSA? The parents' federal or state tax return?
 - d. Is it the proponents' intent to cover room and board if a student attends full-time at an institution that does not have on-campus housing, such as a community college? Is it the proponents' intent to cover off-campus housing or the equivalent on-campus cost if a student cannot get a room on campus?
 - e. The scholarship covers a maximum of 150 semester credit hours. Is there a limit on the number of years that a student may take to earn the 150 semester credit hours? For example, if the student takes a semester or year off school, can the student reapply for the scholarship so long as the student is still on a degree path and has not exceeded the maximum credit hours limit?
 - f. The implementation of a "last dollar" scholarship may require additional guidelines. Would the proponents clarify that the Colorado Department of Higher Education or the Colorado Commission on Higher Education may adopt policies relating to the determination of the scholarship amount for each student?
 - g. If a student receiving the scholarship does not graduate or transfers to a private or out-of-state institution to finish college, does the student need to repay the scholarship? Could the student simply remain in Colorado for the same number of years that the student attended college before dropping out? Could a transfer student return to Colorado after graduating from a private or out-of-state college for a certain number of

years to satisfy the "after final semester" provisions of section 23-77-106 of the proposed initiative?

7. Section 23-77-106 of the proposed initiative – After final semester:
 - a. Due to the various ways in which a student can be classified as an in-state student pursuant to article 7 of title 23, Colorado Revised Statutes, for example, parents' domicile, military service, parents' corporate relocation, and qualifying as a homeless youth, the requirement that a student "remain qualified for in-state tuition" as part of the "after last semester provision" may not be relevant after the student's graduation because the student's parents may move out of state or for other reasons. The proponents may want to consider tying the "after last semester" provision to the student remaining in Colorado as his or her primary residence for the appropriate number of years after his or her last semester, instead of maintaining in-state tuition eligibility.
 - b. Free college in Colorado will likely increase the number of students who attend college and apply for jobs that require a college degree. What if a student cannot find a job in Colorado after graduation in his or her field or has an internship opportunity in another state? What if the student wants to attend a master's program at Stanford, for example, or medical school outside of Colorado? A student would not know until after graduation if college was free or if he or she owes a substantial debt to Colorado. Are there any exceptions to the "after last semester" provisions? Could a student return later and reside for the requisite period of time or pay some sort of tax to the state in lieu of full repayment?
 - c. What if a student enters the Armed Forces on active duty or reserve status and is required to live in another state?
8. There are several provisions of the scholarship program, including but not limited to eligibility, scholarship coverage, "after last semester" provisions, and funding of the program that may need to be further clarified either by the Colorado General Assembly through legislation or through policies adopted by the Colorado Department of Higher Education, the Colorado Commission on Higher Education, or other state agencies. Is it the proponents' intent that the Colorado General Assembly and state agencies may clarify scholarship program provisions? For administrative policies and rules, the proponents may wish to include specific language in the proposed initiative that authorizes state

agencies to adopt rules or policies related to the implementation of the scholarship program.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Statutory sections containing a short title for an entire article are not typically combined with other statutory language. For example, in section 23-77-101, the "single subject purpose" should be removed or relocated so the short title stands alone as follows:

23-77-101. Short title. THE SHORT TITLE OF THIS ARTICLE 77 IS THE "FREE COLLEGE FOR COLORADO INITIATIVE".

2. In subsections, paragraph letters should be shown in lowercase lettering as follows:

X-X-XXXX. Headnote. (1) Subsection:

- (a) Paragraph.
- (b) Paragraph.

3. In accordance with standard drafting practice, section 23-77-102 should be formatted as follows:

23-77-102. Legislative declaration. (1) THE PEOPLE OF COLORADO FIND THAT:

- (a) BECAUSE COLLEGE EDUCATION...
- (b) THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES
DEPARTMENT OF LABOR...; AND
- (c) IN 2014, THE STATE HIGHER EDUCATION EXECUTIVE OFFICERS
ASSOCIATION...
- (2) THE PEOPLE OF COLORADO FURTHER FIND THAT...
 - (a) LIMITING ACCESS...
 - (b) ...
 - (c) ...; AND
 - (d)

(2) THEREFORE, THE PEOPLE OF COLORADO DECLARE THAT THE
ENACTMENT OF THIS ARTICLE 77, AUTHORIZING....

4. It is standard drafting practice to only capitalize proper nouns, such as "Colorado". For example, do not capitalize "bureau of labor statistics", "state higher education executive officers association", or "department of education".
5. Please use the internal citations "this article 77" (not "this article") and "this title 23" (not "this title") to conform with current standard drafting practices.
6. Please include punctuation at the end of each subsection, paragraph, subparagraph, and sub-subparagraph, and "and" if applicable. For example:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph:

(I) Subparagraph; and

(II) Subparagraph.

7. The following is the standard drafting language used for creating a definitions section:

23-77-103. Definitions. AS USED IN THIS ARTICLE 77, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "SCHOLARSHIP" MEANS...

The definitions should be in alphabetical order.

8. The sentence in subsection (4) of the definitions section is missing an article before the phrase "DECLARED DEGREE".
9. Please include an introductory portion (IP) for each section that includes a list of items and punctuate it with a colon. For example, section 23-77-104 should look like this:

23-77-104. Eligibility. (1) TO BE ELIGIBLE FOR THE SCHOLARSHIP, AN APPLICANT MUST:

(a) QUALIFY FOR IN-STATE TUITION;

(b) FILL OUT THE FAFSA APPLICATION AND ACCEPT ALL AVAILABLE GRANTS;

10. For clarity, please spell out acronyms such as "FAFSA" and "GPA" or include them in the definitions section.
11. Please spell out all numbers and percentages.

12. References to the "Colorado Department of Higher Education" should not be capitalized and should be followed by a statutory cite – "THE DEPARTMENT OF HIGHER EDUCATION, CREATED IN SECTION 24-1-114". Alternatively, it could be added to the definitions section to avoid having to include the full name and statutory cite in each reference.
13. It is standard drafting practice to not have a paragraph (a) without an accompanying paragraph (b). Please see section 23-77-106.